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§17.1-800 Virginia Criminal Sentencing Commission created.

There is hereby created within the judicial branch as an agency of the Supreme Court of Virginia, the Virginia Criminal Sentencing Commission, hereinafter referred to in this chapter as the Commission.

§ 17.1-801. Purpose

The General Assembly, to ensure the imposition of appropriate and just criminal penalties, and to make the most efficient use of correctional resources, especially for the effective incapacitation of violent criminal offenders, has determined that it is in the best interest of the Commonwealth to develop, implement, and revise discretionary sentencing guidelines. The purposes of the Commission established under this chapter are to assist the judiciary in the imposition of sentences by establishing a system of discretionary guidelines and to establish a discretionary sentencing guidelines system which emphasizes accountability of the offender and of the criminal justice system to the citizens of the Commonwealth.

The Commission shall develop discretionary sentencing guidelines to achieve the goals of certainty, consistency, and adequacy of punishment with due regard to the seriousness of the offense, the dangerousness of the offender, deterrence of individuals from committing criminal offenses and the use of alternative sanctions, where appropriate.

§ 17.1-802. Membership; compensation.

A. The Commission shall be composed of seventeen members as follows:

1. Six judges or justices, who may be judges of a circuit court who regularly hear criminal cases or judges or justices of the Supreme Court or the Court of Appeals, to be appointed by the Chief Justice of the Supreme Court of Virginia;
2. One person who is not an active member of the judiciary, to be appointed as Chairman by the Chief Justice of the Supreme Court of Virginia for a term of four years subject to confirmation by the General Assembly. The Chairman shall designate a vice-chairman from among the other members to serve a term commensurate with that of the Chairman;
3. The Chairman of the House Committee for Courts of Justice or his designee who shall be a member of the committee and two persons to be appointed by the Speaker of the House of Delegates;
4. The Chairman of the Senate Committee for Courts of Justice or his designee who shall be a member of the committee and one person to be appointed by the Senate Committee on Rules;
5. Four persons to be appointed by the Governor, at least one of whom shall be a representative of a crime victims' organization or a victim of crime as defined in subsection B of § 19.2-11.01; and
6. The Attorney General of Virginia or his designee for a term commensurate with his term of office.

All members shall be citizens of the Commonwealth.

B. Except for legislative members and gubernatorial appointments,

appointments to the Commission made on and after January 1, 2001, shall be for terms of four years. Legislative members shall serve terms coincident with their terms of office. Appointments to the Commission made by the Governor on and after January 1, 2006, shall be for terms of four years. Members initially appointed to the Commission prior to January 1, 1998, may serve no more than three consecutive terms. Members initially appointed on and after January 1, 1998, shall not be eligible to serve more than two consecutive terms except for the Attorney General who shall serve by virtue of his office. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. The remainder of any term to which a member is appointed to fill a vacancy or the service of an initial term of three years or less shall not constitute a term in determining the member's eligibility for reappointment.

C. Legislative members of the Commission shall receive compensation as provided in § 30-19.12 and nonlegislative citizen members of the Commission shall receive compensation as provided in § 2.2-2813 and all members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Virginia Sentencing Commission.

§ 17.1-803. Powers and duties.

The Commission shall:

1. Develop, maintain and modify as may be deemed necessary, a proposed system of statewide discretionary sentencing guidelines for use in all felony cases which will take into account historical data, when available, concerning time actually served for various felony offenses committed prior to January 1, 1995, and sentences imposed for various felony offenses committed on or after January 1, 1995, and such other factors as may be deemed relevant to sentencing.
2. Prepare, periodically update, and distribute sentencing worksheets for the use of sentencing courts which, when used, will produce a recommended sentencing range for a felony offense in accordance with the discretionary sentencing guidelines established pursuant to subdivision 1.
3. Prepare, periodically update, and distribute a form for the use of sentencing courts which will assist such courts in recording the reason or reasons for any sentence imposed in a felony case which is greater or less than the sentence recommended by the discretionary sentencing guidelines.

4. Prepare guidelines for sentencing courts to use in determining appropriate candidates for alternative sanctions which may include, but not be limited to (i) fines and day fines, (ii) boot camp incarceration, (iii) local correctional facility incarceration, (iv) diversion center incarceration, (v) detention center incarceration, (vi) home incarceration/electronic monitoring, (vii) day or evening reporting, (viii) probation supervision, (ix) intensive probation supervision, and (x) performance of community service.

5. Develop an offender risk assessment instrument for use in all felony cases, based on a study of Virginia felons, that will be predictive of the relative risk that a felon will become a threat to public safety.

6. Apply the risk assessment instrument to offenders convicted of any felony that is not specified in (i) subdivision 1, 2 or 3 of subsection A of § 17.1-805 or (ii) subsection C of § 17.1-805 under the discretionary sentencing guidelines, and shall determine, on the basis of such assessment and with due regard for public safety needs, the feasibility of achieving the goal of placing twenty-five percent of such offenders in one of the alternative sanctions listed in subdivision 4. If the Commission so determines that achieving the twenty-five percent or a higher percentage goal is feasible, it shall incorporate such goal into the discretionary sentencing guidelines, to become effective on January 1, 1996. If the Commission so determines that achieving the goal is not feasible, the Commission shall report that determination to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia on or before December 1, 1995, and shall make such recommendations as it deems appropriate.

7. Monitor sentencing practices in felony cases throughout the Commonwealth, including the use of the discretionary sentencing guidelines, and maintain a database containing the information obtained.

8. Monitor felony sentence lengths, crime trends, correctional facility population trends and correctional resources and make recommendations regarding projected correctional facilities capacity requirements and related correctional resource needs.

9. Study felony statutes in the context of judge-sentencing and jury-sentencing patterns as they evolve after January 1, 1995, and make recommendations for the revision of general criminal offense statutes to provide more specific offense definitions and more narrowly prescribed ranges of punishment.

10. Report upon its work and recommendations annually on or before December 1 to the General Assembly, the Governor and the Chief Justice of the Supreme Court of Virginia.

11. Perform such other functions as may be otherwise required by law or as may be necessary to carry out the provisions of this chapter.

§ 17.1-804. Meetings; staff support.

A. Regular meetings of the Commission shall be held on a quarterly basis and at such other times as the Chairman may determine. Nine members of the Commission shall constitute a quorum. The Commission may hold public hearings.

B. The Commission may appoint a director and fix his duties and compensation. The Director may with prior approval of the Commission employ and fix the duties and compensation of such adequate staff as may be requisite to carry out the duties of the Commission. Other professional personnel, consultants and secretarial and clerical employees may be employed or contracted upon such terms and conditions as set forth by the Commission. The salaries, per diem and other expenses necessary to the functions of the Commission shall be payable from funds appropriated to the Commission. Adequate office space shall be provided by the Executive Secretary of the Supreme Court.

C. All agencies of the Commonwealth, their staffs and employees shall provide the Commission with necessary information for the performance of its duties.

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